IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/11/2004

CORAM

THE HONOURABLE MR. B. SUBHASHAN REDDY, CHIEF JUSTICE
and
THE HONOURABLE MR. JUSTICE A. KULASEKARAN

W.P. No. 2570 of 2000 and W.P.No. 9139 of 2000
and
W.M.P. No. 3964 and 13441 of 2000

Tamil Nadu Pollution Control Board
rep. by its Member Secretary
100, Anna Salai
Chennai 600 032 ..Petitioner in both WPs

-Vs-

1. The State Human Rights Commission
Tamil Nadu
rep. by its Member
Hon'ble R. Rathinasami
35, Thiru-vi-ka Salai ... 1st Respondent in
Chennai 600 014 both the WPs

2. Association of Radio and
Television Engineering Employees
All India Radio
rep. by its Unit Secretary ... 2nd Respondent in
Tuticorin 628 008 WP No. 2570/2000

3. S.P. Muthuraman
President, Tirunelveli District
Tamil Manila Congress Youth Wing
Tamil Manila Congress Dist Office
Vannarapettai ... 2nd Respondent in
Tirunelveli 627 003 WP No. 9139/2000

Petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mrs. Rita Chandrasekaran in both the Writ Petitions

For Respondents : Mr. V.R. Balasubramanian for R1 in both the Writ Petitions

:COMMON ORDER

A. Kulasekaran, J)

The prayer in WP No. 2570 of 2000 is for a Writ of Certioarified Mandamus to quash the enquiry proceedings in Case No.1444/rrs/99 in pursuance of the impugned order dated 07-12-1999 of the first respondent and direct the first respondent herein not to entertain any complaint or matters relating to 'pollution' in the State of Tamil Nadu.

2. The prayer sought for in WP No. 9139 of 2000 is for a Writ of Certiorarified Mandamus to call for the records and to quash the enquiry proceedings in Case No.1025/RRS/2000 in pursuance of the impugned order dated

17-05-2000 in so far as the petitioner/Board is concerned and direct the first respondent herein not to entertain any such complaint or matters relating to 'pollution' in the State of Tamil Nadu.

3. The case of the second respondent in WP No. 2570 of 2000 is that they have given a complaint to the first respondent herein that M/s. Sterlite Industries Limited, Tuticorin, which is a copper smelter plant, emits sulphur dioxide which settles down in the vicinity of the factory causing air pollution, as a result, the people of the vicinity including the employees of the second respondent are seriously affected. The first respondent, on the complaint of the second respondent felt it necessary to hold enquiry and issued the impugned notice. The facts involved in the case is that W.P. Nos. 15501 to 15503/1996, 5789/1999 and 16861 of 1998 were filed seeking common relief of quashing the clearance given by the Ministry of Environment and Forest and Tamil Nadu State Environment Committee. When the said writ petitions are pending, the first respondent has issued the impugned notice dated 07-12-1999 to the writ petitioner alleging pollution caused by the Sterlite Industries and for its closure.

4. The case of the second respondent in WP No. 9139 of 2000 is that it has given a complaint to the first respondent stating that M/s. India Cements Limited is causing air pollution which affects the public and also agricultural activities in the locality. On the said complaint, the first respondent felt it necessary to hold an enquiry and issued the impugned notice to the petitioner. The facts involved in this case is in respect of alleged violation caused by India Cements Limited, Shankar Nagar, Tirunelveli, writ Petitions are filed in WP No. 7822 and 13508 of 1998 seeking direction to prevent the smoke emanated from the said factory and to assess the damages caused to the residents due to the said pollution. When the said writ petitions are pending, the first respondent issued notice dated 17-05-2000 to the petitioner alleging pollution caused by India Cements Limited and to assess the alleged damages caused to the residents.

5. The common grounds taken in the writ petitions by the petitioners is while the writ petitions are pending in respect of the same

subject matter before the Green bench of this Court, the first respondent is prohibited under Regulations (g) of Regulations 9 of State Human Rights (TN) (Procedure) Regulations, 1997. The enquiry proceedings initiated by the first respondent would lead to multiplicity of cases and encourage unnecessary and unlimited litigation. It is not proper for the first respondent Commission to entertain the complaint against the Tamil Nadu Pollution Control Board in respect of matters relating to pollution, which falls under the provisions of Water Act, Air Act and Environment (Protection) Act. Any such action by the first respondent will defeat the very purpose of the aims and objects of the various Acts, under which the Board functions and exercising its statutory powers and it is an appellate authority constituted under the respective Acts and Rules. Under Section 23 of the Environment Act, 1 986, the Central Government has delegated powers vested in it under Section 5 of the Act to the Tamil Nadu Government by notification of the Ministry of Environment and Forest dated 10-02-1988, in and by the said notification, the State Government can also issue directions in writing to any persons, officers or any authority for closure or prohibition or regulation of any industrial operation or process and such person shall be bound to comply with such conditions. The Central Government, under the Environment (Protection) Act constituted the Loss of Ecology (Prevention and payment of Compensation) authority for the State of Tamil Nadu, which is vested powers under Section 5 of the Environment Act and also assess loss to the ecology and environment for the affected areas and identify the individual and families which suffered because of the pollution, while so, if any person is aggrieved in respect of any pollution, they can seek the remedy with the said authority and there is no need to entertain any complaint by the first respondent. Section 16 of Protection of Human Rights Act contemplates that persons likely to be prejudicially affected to be heard. If on any such of the enquiry, the Commission considers it necessary to enquire into the conduct of any person; or is of the opinion that the reputation of any person is likely to be prejudically affected by the enquiry, it shall give to the person reasonable opportunity of being heard in the enquiry and to produce evidence in his defence provided that nothing in this section shall apply where the credit of the witness is being impeached. By virtue of the above provisions, the first respondent ought not have treated the petitioner as respondent in the case before it, in the absence of any allegation against the petitioner in the complaint filed by the second respondent in respect of either its conduct or reputation.

6. The first respondent/Commission has filed its counter in WP No. 2 570 of 2000 stating that the Commission is not aware of the case pending before this Court; that the violations committed by third parties namely M/s. Sterlite Industries Limited within a period of one year prior to 26-04-1999; that the subject matter pending before the Commission do not appear to be the subject matter of the case pending before this Court; no documents were produced by the petitioner to show that the subject matter of the case pending before this Court is the subject matter for which the Commission has ordered notice under Section 16 of the Protection of Human Rights Act; that if there is a complaint regarding deprivation of human right suffered by any person due to pollution or lack of safety measures and clean environment, the Commission is empowered to hold an enquiry on such complaint; that the averment that the Commission is not a civil Court and the Environment

(Protection) Act does not exclude the jurisdiction of the Commission; that under Section 10 (2) of the Protection of Human Rights Act, the Commission is empowered to regulate its own procedure read with Section 29 and the Commission framed its own regulation; that the Regulation 9 (g) provides that the Commission shall dismiss in limine any complaint which are subjudice in a Court or Tribunal, but the subject matter in dispute are not subjudice in a Court or Tribunal; Section 1 2 (a) of Protection of Human Rights Act empowers the Commission to inquire suo motu or on a petition presented to it by a victim or any person on his behalf, into the complaint of violation of human rights or abatement thereof or negligence in the prevention of such violation by a public servant; that the petitioner herein is a public servant and there is negligence on the part of the petitioner herein in the prevention of such violation, hence, it had rightly proceeded against the petitioner; that no immunity can be conferred upon the petitioner or its staff; that after receipt of the complaint from the complainants, the Commission ordered notice to the petitioner and the petitioner also appeared in person and later filed written statement; that before considering the case on merits, the petitioner has approached this Court; that the Commission has never rejected the objections of the petitioner and prayed for dismissal of the writ petitions.

7. Article 21 of the Constitution of India guarantees the life with dignity. This article worded with simple language, its scope has been extended to life, liberty, education, health etc., since it is the subject matter in large number of litigation. It prohibits deprivation of life or personal liberty except due process of law. It essentially deals with personal liberty, it is expanded to cover environment and public health. It concern about 'life' when deals with environment; and concern about 'liberty' when deals with human rights.

8. Human right means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India. Human Rights are those minimal rights, which every individual must have against the State or other public authority by virtue of his/ her being a member of the human family, irrespective of any other consideration. The first documentary used the word human right is found in the charter of the United Nations which was adopted at Sanfransisco on June 25, 1945 and ratified by majority of signatories in October of that year. The first concrete step by way of formulating various human rights was taken by United Nations General Assembly in December 1948 by adopting the Universal Declaration of Human Rights. The Universal Declaration has operated merely as statement of ideals which was not of the nature of legal binding covenants and no machinery was provided for its enforcement. A deficiency was removed by United Nations General Assembly by adopting two covenants in December 1956 which are the

covenants of (i) civil and human rights and (ii) economic, social and secular rights. Thereafter, the two covenants came into force in December 1976. The history given supra shows the emergence of human rights.

9. In India, the Honourable Supreme Court has drawn inspiration

from the international charters with the result, Indian Courts attempted to interpret statutes to conform to Rules of International Law or convention to which India is a party. The National Human Rights Commission is an expert body in itself. It is also a body sui jurist created under the Protection of Human Rights Act, 1993, for examining and investigating the question of complaints relating to violation of human rights as also the negligence on the part of the public servants in preventing such violation Paramjit Vs. State of Punjab AIR 1999 SC 340. The State Commission is also endowed with similar powers.

10. The relevant provisions of the Protection of Human Rights Act, 1993 runs as follows:-

Section 2 (1) (d) Human rights means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India.

Section 12. Functions of the Commission The Commission shall perform all or any of the following functions namely-
(a) inquire, suo motu or on a petition presented to it by a victim or any person on his behalf, into complaint of-
(i) violation of human rights or abetment thereof; or
(ii) negligence in the prevention of such violation by a public servant;
(b) intervene in any proceeding involving any allegation of violation of human rights pending before a Court with the approval of such Court.
(c) visit, under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon;
(d) review the safeguards provided by or under the constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;
(e) review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures
(f) study treaties and other international instruments on human rights and make recommendations for their effective implementation
(g) undertake and promote research in the field of human rights
(h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;
(i) encourage the efforts of non-governmental organisations and institutions working in the field of human rights;
(j) such other functions as it may consider necessary for the promotion of human rights.
Section 13. Powers relating to inquiries (1) The Commission shall, while inquiring into complaints under this Act, have all the powers of a Civil Court trying a suit under the Code of Civil Procedure, 190 8 (5 of 1908), and in particular in respect of the following matters, namely;
(a) summoning and enforcing the attendance of witnesses and

examining them on oath;
(b) discovery and production of any document;
(c) receiving evidence on affidavits;
(d) requisitioning any public record or copy thereof from any Court or Office;
(e) issuing Commissions for the examination of witnesses or documents;
(f) any other matter which may be prescribed.

(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under law (45 of 1860) for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of Section 176 and Section 177 of the Indian Penal Code.
(3) The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the enquiry may be found, and may seize any such document or take extracts or copies therefrom, subject to the provisions of Section 100 of the Code of Criminal Procedure, 1973, in so far as, it may be applicable.
(4) The Commission shall be deemed to be a civil Court and when any offence as is described in Section 175, Section 178, Section 179, Section 180 or Section 228 of the Indian Penal Code is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if, the case has been forwarded to him under Section 346 of the Code of Criminal Procedure, 1973.
(5) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purposes of Section 196 of the Indian Penal Code, and the Commission shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Section 14 Investigation (1) The Commission may, for the purpose of conducting any investigation pertaining to the inquiry, utilise the services of any officer or investigating agency of the Central Government or State Government with the concurrence of the Central Government or the State Government, as the case may be.
(2) For the purpose of investigating into any matter pertaining to the inquiry, any officer or agency whose services are utilised under sub-section (1) may, subject to the direction and control of the Commission -
(a) summon and enforce the attendance of any person and examine him;
(b) require the discovery and production of any document; and

(c) requisitioning any public record or copy therefrom from any office

(3) The provisions of Section 15 shall apply in relation to any statement made by a person before any officer or agency whose services are utilised under sub-section (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.

(4) The officer or agency whose services are utilised under subsection (1) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission within such period as may be specified by the Commission in this behalf.

(5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under sub-section (4) and for this purpose the Commission may make such inquiry (including the examination of the person or persons who conducted or assisted in the investigation) as it thinks fit.

Section 16. Persons likely to be prejudicially affected to be heard. If, at any stage of the inquiry, the Commission -

(a) considers it necessary to enquire into the conduct of any person; or

(b) is of the opinion that the reputation of any person is likely to be prejudically affected by the enquiry,

it shall give to the person reasonable opportunity of being heard in the enquiry and to produce evidence in his defence

provided that nothing in this section shall apply where the credit of the witness is being impeached.

Section 17. Inquiry into Complaints:- The Commission, while inquiring into the complaints of violations of human rights may -

(i) call for information or report from the Central Government or any State Government or any other authority or organisation subordinate thereto within such time as may be specified by it:

Provided that

(a) if the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own;

(b) if, on receipt of information or report, the Commission is satisfied either that no further enquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly.

Section 21 -

Section 36. Matters not subject to jurisdiction of the Commission -

(1) The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force

(ii) The Commission or the State Commission shall not inquire into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed.

Regulation 8 of National Human Rights Commissions (Procedures) Regulations, 1997:-

8. General.- (a) Complaints may be made to the Commission in English or Tamil or Hindi or in any of the languages included in the Eighth Schedule of the Constitution.
(b) No fee shall be chargeable on complaints
(c) The complaints should disclose a complete picture of the matter complained against. The Commission may, if necessary call for further information and may direct affidavits to be filed in support of the allegations, whenever considered necessary.

11. Environment protection is the watchword of the last 20th Century, however, during the last two decades, there has been an increasing concern for an awareness towards environmental protection at the domestic level as also international. The Honourable Supreme Court, while giving due importance to the protection of environmental and having regard to the grave consequences of pollution of water and air and need for protecting and improving the natural environment, which construes to be one of the fundamental duties under the statutes had expressed the view in M.C. Mehta Vs.Union of India and others AIR 1988 SC 1115 that it is the duty of the Central Government to direct all the educational institutions throughout India to teach at least one hour in a week lessons relating to protection and improvement of natural environment. Article 48A of the Constitution provides for protection and improvement of environment and also safeguarding Forest and wild life. Article 15-A of the Constitution provides interalia that it shall be the duty of every Citizen of India to protect and improve and protect natural environment and to have compassion with living creatures.

12. In India, we have sufficient legislations on the subject in the form of The Environment (Protection) Act, 1986, Water (Prevention and Control) Act, 1974 and Air (Prevention and Control) Act 1981. The Honourable Supreme Court, while interpreting Article 21 of the Constitution (Protection for life and personal liberty) has held in B. Vadhera Vs. Union of India 1996 7 SCC 594 that right to protection and water free from pollution falls within Article 21.

13. The relevant provisions of the Environment (Protection) Act, 198 6.
Section 2. Definitions In this Act, unless the context otherwise requires -

(a) 'environment' includes water, air and land and the interrelationship which exist among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property;
(b) 'environment pollutant' means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to

environment;

Section 10 : Powers of entry and inspection. - (1) Subject to the provisions of this Section, any person empowered by the Central Government in this behalf shall have a right to enter, at all reasonable times with such assistance as he considers necessary, any place.
(a) for the purpose of performing any of the functions of the Central Government entrusted to him:
(b) for the purpose of determining whether and if so in what manner, any such functions are to be performed or whether any provisions of this Act or the rules made thereunder or any notice, order, direction or authorisation served, made, given or granted under this Act is being or has been complied with:
(c) for the purpose of examining and testing any equipment, industrial plant, record, register, document or any other material object or for conducting a search of any building in which he has reason to believe that an offence under this Act or the rules made thereunder has been or is being or is about to be committee and for seizing any such equipment, industrial plan, record, register, document or other material object if he has reasons to believe that it may furnish evidence of the commission of an offence punishable under this Act or the rules made thereunder or that such seizure is necessary to prevent or mitigate environmental pollution.
(2) Every person carrying on any industry, operation or process or handling any hazardous substance shall be bound to render all assistance to the person empowered by the Central Government under subsection (1) for carrying out the functions under that sub-section and if he fails to do so without any reasonable cause or excuse, he shall be guilty of an offence under this Act.

(3) If any person wilfully delays or obstructs any person empowered by the Central Government under sub-section (1) in the performance of his functions, he shall be guilty of an offence under this Act.

(4) The provisions of the Code of Criminal Procedure, 1973 (II of 19 74), or in relation to the State of Jammu and Kashmir, or any area in which that Code is not in force, the provisions of any corresponding law in force in that State or area shall, so far as may be, apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under Section 94 of the said Code or, as the case may be, under the corresponding provision of the said law.

Section 11. Power to take sample and procedure to be followed in connection therewith.- (1) The Central Government or any officer empowered by it in this behalf, shall have power to take, for the purpose of analysis, samples of air, water, soil or other substance from any factory, premises or other place in such manner as may be prescribed.
(2) The result of any analysis of a sample taken under sub-section (1) shall not be admissible in evidence in any legal proceedings unless the provisions of sub-sections (3) and (4) are complied with.

(3) Subject to the provisions of sub-section (4), the person

taking the sample under sub-section (1) shall -

(a) serve on the occupier or his agent or person in charge of the place, a notice, then and there, in such form as may be prescribed, of his intention to have it so analysed;
(b) in the presence of the occupier or his agent or person, collect a sample for analysis;
(c) cause the sample to be placed in a container or containers which shall be marked and sealed and shall also be signed both by the person taking the sample and the occupier or his agent or person;
(d) send without delay, the container or the containers to the laboratory established or recognised by the Central Government under Section 12.

(4) When a sample is taken for analysis under sub-section (1) and the person taking the sample serve on the occupier or his agent or person, a notice under clause (a) of sub-section (3), then-
(a) in a case where the occupier, his agent or person wilfully absents himself, the person taking the sample shall collect the sample for analysis to be placed in a container which shall be marked and sealed and shall also be signed by the person taking the sample, and
(b) in a case where the occupier or his agent or person present at the time of taking the sample refuses to sign the marked and sealed container or containers of the sample as required under clause (c) of sub-section (3), the marked and sealed container or containers shall be signed by the person taking the samples

and the container or containers shall be sent without delay by the person taking the sample for analysis to the laboratory established or recognised under Section 12 and such person shall inform the Government Analyst appointed or recognised under Section 13 in writing, about the wilful absence of the occupier or his agent or person, as the case may be, his refusal to sign the container or containers.

Section 12. Environment Laboratories. - (1) The Central Government may, by notification in the Official Gazzette, -
(a) establish one or more environmental laboratories;
(b) recognise one or more laboratories or institutes as environmental laboratories to carry out the functions entrusted to an environmental laboratory under this Act.

(2) The Central Government may, by notification in the Official Gazzette, make rules specifying -

(a) the functions of the environmental laboratory;
(b) the procedure for the submission to the said laboratory of samples of air, water, soil or other substance for analysis or tests, the form of the laboratory report thereon and the fees payable for such report:

Section 13. Government Analysts.- The Central Government, may, by notification in the official gazzette, appoint or recognise such persons as it thinks fit and having the prescribed qualifications to be Government Analysts for the purpose of analysis of samples of air, water, soil or other substance sent for analysis to any environmental laboratory established or recognised under sub-section (1) of Section 12 .

Section 14. Reports of Government Analysts.- Any document purporting to be a report signed by a Government Analyst may be used as evidence of the facts stated therein in any proceeding under this Act.

Section 15. Penalty for contravention of the provisions of the Act and the rules, orders and directions.- (1) Whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued thereunder, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extent to five years or with fine which may extent to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may

extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.

(2) if the failure or contravention referred to in sub-section (1) continues beyond a person of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years.

Section 16. Offences by Companies.- (1) Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:
Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of , or is attributable to any neglect on the part of; any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Section 18. Protection of action taken in good faith:- No suit, prosecution or legal proceedings shall lie against the Government or any officer or other employee of the Government or any authority constituted under this Act or any member, officer or other employee of such authority in respect

of anything which is done or intended to be done in good faith in pursuance of this Act or the rules, made or orders or directions issued thereunder.

Section 19. Cognizance of offences. - No Court shall take cognizance of any offence under this Act except on a complaint made by-

(a) the Central Government or any authority or officer authorised in this behalf by that Government; or
(b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or on the authority or officer authorised as aforesaid.

Section 22. Bar of jurisdiction No civil Court shall have jurisdiction to entertain any suit or proceeding in respect of anything done, action taken or order or direction issued by the Central Government or any other authority or officer in pursuance of any power conferred by or in relation to its or his functions under this Act.

Section 24. Effect of other laws (1) Subject to the provisions of sub-section (2), the provisions of this Act and the rules or orders made therein shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act.

(2) Where any act or omission constitutes an offence punishable under this Act and also under any other Act then the offender found guilty of such offence shall be liable to be punished under the other Act and not under this Act.

14. A cursory reading of the relevant sections would make it clear that the authorities under the Protection of Human Rights Act and the Environment (Protection) Act operates in different areas or field.

15. Harmonious interpretation of the provisions is justifiable and acceptable. The principles of interpretation is that no provision of an enactment should be interpreted and understood in such a manner as to render another provision in the same or another enactment totally ineffective or inoperative unless there is expression intention to that effect. As pointed out by the Apex Court in PolliSetti Vs. Kalluri Kameshwaramma AIR 1991 SC 604, statutes are made for public good and must be liberally construed.

16. The language of statutory provisions of both Acts are clear and unambiguous, however for limited purpose of determining the area of operation of the Acts, it may be proper to see the purpose or object of the legislation, it is permissible to look into the situations which prevail at the time when the Law was passed and which necessiated the passing of that Law. Shashikant Laxman Kale Vs.Union of India AIR 1990 SC 2114.

17. The objects and reasons of the Protection of Human Rights Act are as follows;

India is a party to international covenants on civil and political right and the international covenants on economical, social and cultural rights adopted by the General Assembly of United Nations on 16-12-1966. After wide range of discussions, the Human Rights Commission Bill 1993 was introduced in the Lok Sabha on 14-05-1993. In view of the urgency of the matter, the Protection of Human Rights Act, 1993 was promulgated by President of India on 28-09-1993. The salient features of the bill were that the Commission will be a fact-finding body with powers to conduct enquiry into complaint of violation of human rights. The Commission will be assisted by investigating agency of Central and State Governments. The Government may also constitute one or more special investigating teams. The State Government may set up Human Rights Court for speedy trial on offences arising out of violation of human rights and may also specify a Public Prosecutor or appoint an Advocate as a Special Public Prosecutor for the purpose of conducting cases in such Courts. The Commission may take steps for effective implementation of the existing Laws and treaties on common rights. The Commission may also undertake research in the field of human rights and measures to promote awareness of human rights among all sections of the society.

18. The statements of objects and reasons relating to The Environment (Protection) Act, 1986 are decline in environmental quality has been evidenced by increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food chains, growing risk of environmental accidents and threats to life support system. Although there are existing laws dealing directly or indirectly with several environmental matters, it is necessary to have a general legislation for environmental protection and also to cover major areas of environmental hazards, multiplicity of regulatory agencies, need for an authority which can assume the lead role of studying, planning and implementing long term requirements of environmental safety and give protection to and coordinate a system of speedy and adequate response to emergency situations threatening the environment. In view of the said factors, there is an urgent need for enactment of a general resolution on environmental pollution which interalia should enable co-ordination of activities of various regulatory agencies, creation of authority or authorities with advocate powers for environmental protection, regulation of discharge of environmental pollutants and handling of hazardous substances, speedy response in the event of accidents threatening environment and deterrent punishment to those who endanger human environment safety and health.

19. It is seen from the said objects and reasons that the Environment (Protection) Act, 1986, Water (Prevention and Control) Act, Air (Prevention and Control) Act, Environment Protection Rules, 1986 and other Rules namely Hazardous Waste (Management and Handling), Manufacture, Storage and Import of Hazardous Chemicals, Hazardous Microorganism, Biological Waste (Management and Handling), Plastic Manufacture, Sale and Usage, Noise

Pollution (Regulation and Control), Ozone depleting Substances (Regulation and Control) and The Batteries (Management and Handling) Rules are comprehensive to deal with pollution and also give protection from pollution.

20. Section 2(a) of the Environment (Protection) Act defines ' environment'. Section 2(b) defines 'environmental Pollutant'.

Section 10 of the environment (Protection) Act enables the Officers empowered by the Central Government to enter and inspect any place for the purpose of performing any functions entrusted under the legislation. It also empowers to punish any person wilfully delays or obstructs any person empowered by the Central Government.

Section 11 of the environment (Protection) Act deals with power to lift samples and the procedure connected therewith. Section 11 of Environment (Protection) Act is similar to Section 21 of Water (Prevention and Control) Act and Section 26 of Air (Prevention and Control) Act.

Section 12 of the environment (Protection) Act speaks about establishment of environmental laboratories.

Section 17 of the environment (Protection) Act fixes criminal liability on the heads of departments of the Government where an offence is committed and the Head of the Departments is unable to prove that the offence was committed without his knowledge or that he exercised due diligence to prevent commission of such offence. Section 17 is similar to Section 48 of Water (Prevention and Control) Act and Section 41 of Air (Prevention and Control) Act.

Section 18 of the Environmental (Protection) Act, Section 59 of Water (Prevention and Control) Act and Section 42 of Air (Prevention and Control) Act are almost similar which protect the officers of the employees of the Government from prosecution or legal proceedings for the cause done or intended to be done in good faith in pursuance of this Act or the rules made or orders or directions issued thereunder.

Section 19 of the Environment (Protection) Act prohibits any Court to take cognisance of any offences under the Act, except on a complaint made by the Central Government or any authority or officer authorised in this behalf by that Government or any person, who has given notice of not less than sixty days of his intention to make a complaint to the Central Government, if within those period the Government or Officer or authority has itself made the complaint and has not communicated to such person which has refused to make such a complaint. Section 19 is similar to Section 49 of Water (Prevention and Control) Act and Section 43 of Air (Prevention and Control) Act.

Section 22 of the Environment (Protection) Act is similar to Section 58 of Water (Prevention and Control) Act and Section 46 of Air (Prevention and Control) Act, which bars jurisdiction of civil court to entertain any suit or proceedings in respect of any action done, action taken or order or direction issued by the Central Government or any other authority or officer in pursuance of any powers conferred by or in relation to its function under the legislation. Section 24 (1) of the Environment (Protection) Act contemplates that subject to the provisions of sub-section (2) of Section 24 the provisions of this Act and the Rules or orders made therein shall have

effect notwithstanding anything inconsistent therein contained in any enactment other than this Act. The expression 'prevents' reliance on any other Law to the contrary.

21. It is seen from the above analysis that the Environment (Protection) Act, 1986 is a Special Act for environmental protection by way of studying, planning and implementing long term requirements on environmental issues and to give protection to co-ordinate a system for speedy and adequate response to emergency situations threatening the environment. It also enables the authorities to co-ordinate the activities of the various regulatory agencies.

22. Notices were issued by the first respondent herein invoking Section 16 of the Protection of Human Rights Act arraying the petitioner herein as respondent. The alleged violation of human rights in the said two cases are third parties caused air pollution. Section 42 of the Air (Prevention and Control) Act, which is similar to Section 18 of the Environment (Protection) Act protects the officers and employees of any authority constituted under the Act or any member, officer or other employees of such authority in respect of anything done or intended to be done in good faith in pursuance of this Act or the Rules made or orders or directions issued thereunder. Section 42 of the Air (Prevention and Control) Act protects the employees of the Board or any officer or any member or other employee of the Board, in respect of anything which done or intended to be done in good faith in pursuance of this Act or Rules made thereunder.
23. Joint reading of both the environment (Protection) Act and Air (Prevention and Control) Act make it clear that no suit or prosecution or legal proceedings shall lie against any authority constituted under the Act or any member, officer or other employee of such authority in respect of anything which is done or intended to be done in good faith in pursuance of this Act or the Rules, made or orders or directions issued thereunder.

24. It is not in dispute that the subject matter, for which the impugned notice has been issued by the Commission is the subject matter of the writ petition Nos. 15501 to 15503 of 1996, 5789 of 1997, 7822, 13508 and 16861 of 1998 and 3964 of 2000 pending before this Court and this Court also issued directions from time to time to the petitioner to permit the said two Industries to function with necessary precautions and safety measures as per norms.

25. Section 36, read with Regulation (g) of Regulations 9 of State Human Rights (TN) (Procedure) Regulations, 1997 prohibits the Commission from enquiring into any matter, which is pending before any Court or Tribunal. In view of the said facts, the impugned notices issued by the Commission citing the petitioner herein as a respondent is quashed.

26. The writ petitions are ordered accordingly. No costs. Consequently, connected WMPs are closed.

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Index : Yes
Internet : Yes

To

The Member
State Human Rights Commission
Tamil Nadu
35, Thiru-vi-ka Salai
Chennai 600 014